



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534

January 30, 2008

Paul W. Moore, Registered Agent  
Moore Construction Co., Inc.  
1641 Guthrie Highway  
Post Office Box 691  
Clarksville, Tennessee 37041-0691

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7099 3400 0014 0970 5152**

Subject: DIRECTOR'S ORDER NO. WPC07-0255  
BRISTOL PARK SEWER LINE and LIFT STATION  
MONTGOMERY COUNTY, TENNESSEE

Dear Mr. Moore:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Patrick Parker, Manager  
Enforcement and Compliance Section

PNP:BPB

cc: DWPC – EFO-Nashville  
DWPC – Compliance File  
OGC



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534**

January 30, 2008

Honorable John Piper, Mayor  
City of Clarksville  
One Public Square  
Clarksville, Tennessee 37040

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7099 3400 0014 0970 5169**

Subject: DIRECTOR'S ORDER NO. WPC07-0255  
BRISTOL PARK SEWER LINE and LIFT STATION  
MONTGOMERY COUNTY, TENNESSEE

Honorable John Piper:

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It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

A handwritten signature in black ink, appearing to be "P. Parker", written over the word "Sincerely,".

Patrick Parker, Manager  
Enforcement and Compliance Section

PNP:BPB

cc: DWPC – EFO-Nashville  
DWPC – Compliance File  
OGC

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

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**IN THE MATTER OF:**

**CITY OF CLARKSVILLE and  
MOORE CONSTRUCTION COMPANY,  
INC.**

**RESPONDENTS**

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)  
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)  
)

**DIVISION OF WATER  
POLLUTION CONTROL**

**CASE NUMBER WPC 07-0255**

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**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

**II.**

The City of Clarksville (hereinafter "Respondent Clarksville") operates the Clarksville Gas and Water Department, which is responsible for the installation of a sanitary sewer and lift station known as Bristol Park Sewer Line and Lift Station in Montgomery County (hereinafter the "site"). Service of process may be made on Respondent Clarksville through the Honorable John Piper, Mayor, at One Public Square, Clarksville, Tennessee 37040.

### III.

Moore Construction Company, Inc. (hereinafter “Respondent Moore”) is an active corporation licensed to conduct business in the State of Tennessee and was contracted by Respondent Clarksville to conduct construction activities at the site. Service of process may be made on Respondent Moore through Paul W. Moore, Registered Agent, at 1641 Guthrie Highway, Post Office Box 691, Clarksville, Tennessee 37041-0691.

### JURISDICTION

### IV.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (the “Act”) has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

### V.

The Respondents are “persons” as defined by T.C.A. §69-3-103(20) and as herein described, the Respondents have violated the Act.

## **VI.**

Tennessee Code Annotated §69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (TNCGP) may be obtained by submittal of a Notice of Intent (NOI), site-specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

## **VII.**

Pursuant to T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## **VIII.**

Spring Creek and its unnamed tributaries are “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, livestock watering and wildlife and irrigation.

## **FACTS**

### **IX.**

On May 16, 2007, Respondent Clarksville submitted an application to the division's Natural Resources Section (NRS), requesting authorization under an individual ARAP to install several utility line crossings in Spring Creek at the site. Also on this date, Respondent Clarksville submitted two NOI forms requesting coverage under the TNCGP for the installation of a sewer lift station and the installation of a gravity sewer system at the site. No additional operators were identified on either NOI.

### **X.**

On July 16, 2007, division personnel from the Nashville Environmental Field Office (N-EFO) issued coverage under the TNCGP to Respondent Clarksville for the sewer lift station and assigned it tracking number TNR145556. The division also requested that Respondent Clarksville identify a primary contractor or a contractor otherwise responsible for Erosion Prevention and Sediment Control (EPSC) implementation and maintenance at the site as required by the TNCGP.

### **XI.**

On August 6, 2007, the NRS issued written ARAP authorization to Respondent Clarksville to install multiple utility line crossings in Spring Creek and its unnamed tributaries and assigned the permit tracking number NRS 07.162.

## **XII.**

On August 29, 2007, division personnel from the N-EFO issued coverage under the TNCGP to Respondent Clarksville for the gravity sewer and assigned it tracking number TNR14557. The division requested that Respondent Clarksville identify a primary contractor or a contractor otherwise responsible for EPSC implementation and maintenance at the site as required by the TNCGP.

## **XIII.**

On October 19 and October 22, 2007, division personnel conducted a complaint investigation at the site and documented that four unauthorized road crossings had been constructed across Spring Creek and one road crossing had been constructed across an unnamed tributary to Spring Creek. The road crossings had been constructed by pushing dirt and gravel into and across Spring Creek and the unnamed tributary, causing a condition in each. At other locations, due to inadequate EPSC measures, eroded material migrated into Spring Creek and its unnamed tributary, resulting in numerous areas of sediment deposition. Additionally, the division noted that sediment-laden pit water was being pumped directly into the unnamed tributary to Spring Creek. Division personnel documented sediment deposits up to 12 inches deep in Spring Creek at the downstream end of the site. Neither the Notice of Coverage (NOC) nor the SWPPP were available on site as required by the permit. A subsequent file review determined that Respondent Moore had not requested or been issued coverage under the TNCGP and that written authorization for the road crossings had not been requested or issued.

#### **XIV.**

On October 29, 2007, the division received updated NOI forms listing Respondent Moore as the primary contractor for the site.

#### **XV.**

On November 6, 2007, the division issued a Notice of Violation (NOV) to Respondent Clarksville and Respondent Moore for the violations observed during the October 19 and October 22, 2007, complaint investigation. The NOV instructed the Respondents to submit a corrective action plan (CAP) to the division addressing the removal of the unauthorized stream crossings and the removal of the sediment in Spring Creek and its unnamed tributary. The Respondents were instructed to submit the CAP to the N-EFO within thirty days of receipt of the NOV.

#### **XVI.**

On December 5, 2007, the division received a CAP from Respondent Moore.

#### **XVII.**

During the course of investigating the Respondent's activities, the division incurred damages in the amount of FOUR HUNDRED TWENTY THREE DOLLARS AND NINETY EIGHT CENTS (\$423.98).



## **VIOLATIONS**

### **XVIII.**

By altering waters of the state without authorization under an ARAP and by failing to comply with the terms and conditions of the TNCGP, the Respondents have violated T.C.A.

§§69-3-108(a)–(b), 114(b), which state in part:

§69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

#### **XIV.**

By causing a condition of pollution to Spring Creek and its unnamed tributary, the Respondents have violated T.C.A. Section §69-3-114(a):

T.C.A. §69-3-114(a) states:

It shall be unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

#### **ORDER AND ASSESSMENT**

#### **XX.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondents.

1. The Respondents shall immediately establish and maintain effective EPSC measures on-site, such that no additional sediment is allowed to enter waters of the state.

2. The Respondents shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
3. The Respondents shall, within 14 days of receipt of this ORDER, submit written documentation and photographic evidence indicating that appropriate EPSC measures are in place. The Respondents shall submit this written documentation and photographic evidence to the Water Pollution Control manager in the N-EFO at 711 R.S. Gass Boulevard, Nashville, Tennessee 37243.
4. The Respondents shall, within 30 days of receipt of this ORDER, submit to the division a corrective action plan (CAP) to remove the unauthorized stream crossings as well as the removal of the sediment to Spring Creek and its unnamed tributary. The CAP shall include detailed methods to be used to restore Spring Creek and its unnamed tributary to its original condition. The CAP shall be prepared by a licensed professional engineer, landscape architect, or other competent professional and shall be implemented in such a manner that will not result in further violations of the Act. The Respondents shall submit the CAP to the Water Pollution Control manager at the N-EFO for review and approval. The Respondents must correct any deficiencies the division finds upon review of the CAP and the corrected CAP should be resubmitted to the division within 30 days of notification of the deficiencies.
5. The Respondents shall, within 30 days of receipt of written approval, initiate the approved actions. The written approval of the CAP by the division will constitute authorization for sediment removal from the affected areas downstream of the road crossings, as well as authorization for restoration of the affected areas of the watershed upstream of the crossings and no additional ARAP coverage is required. The Respondents shall submit written notification to the division that work has begun at the

time the Respondents initiate the CAP. The Respondents shall submit the written notification to the Water Pollution Control manager at the N-EFO shown in item 3, above.

6. The Respondents shall, within 60 days of initiating the approved CAP, complete the CAP and submit written notification of completion to the division. The Respondents shall submit the written notification to the Water Pollution Control manager in the N-EFO shown in item 3, above.
7. The Respondents shall pay a CIVIL PENALTY of FORTY ONE THOUSAND DOLLARS (\$41,000.00) to the division, hereby ASSESSED to be paid as follows:
  - a. The Respondents shall, within 30 days of receipt of this ORDER, pay a CIVIL PENALTY in the amount of ELEVEN THOUSAND DOLLARS (\$11,000.00).
  - b. If the Respondents fail to comply with Part XX, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
  - c. If the Respondents fail to comply with Part XX, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
  - d. If the Respondents fail to comply with Part XX, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND HUNDRED DOLLARS (\$5,000.00), payable within 30 days of default.
  - e. If the Respondents fail to comply with Part XX, item 4 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.

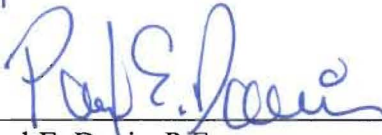
- f. If the Respondents fail to comply with Part XX, item 5 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
  - g. If the Respondents fail to comply with Part XX, item 6 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
8. The Respondents shall pay DAMAGES to the division in the amount of FOUR HUNDRED TWENTY THREE DOLLARS AND NINETY EIGHT CENTS (\$423.98).

The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the commissioner of the Tennessee Department of Environment and Conservation on this 30<sup>th</sup> day of January 2008.



Paul E. Davis, P.E.

Director, Division of Water Pollution Control

### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§69-3-109, 115, allows any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L&C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform

Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Please write your case number on all payments and all correspondence concerning this matter.